

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5357 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HITENBHAI VANMALIDAS GANATRA

Versus

POLICE COMMISSIONER

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr. K.T. Dave, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Y.S. Lakhani for the
petitioner and learned A.G.P. Mr. K.T.Dave for the
respondents nos.1, 2 and 3.

1. The detention order dated 25-5-1999 passed by the
respondent no.1-the Police Commissioner, Rajkot City,
against the petitioner under Section 3(1) of the Gujarat
Prevention of Antisocial Activities Act, 1985 (" PASA"

for short) is challenged in the present petition under Article 226 of the Constitution.

2. The petitioner has produced the impugned order and committal order vide Annexure "A" at pages 21 and 22 while the grounds of detention supplied to the petitioner under Sec.9(1) of "PASA" has been produced at Annexure "B" at pages 23 to 47 of the compilation.

3. The grounds of detention indicate that ten criminal cases were filed against the petitioner on 23-9-1998 at "A" Division Police Station in respect to offences made punishable under Secs.406, 409, 420, 467, 468, 471, 114 and 120B of the Indian Penal Code. That in some of the cases investigation is completed, charge-sheet is filed and are pending for trial in Court while the other cases are under investigation.

The grounds of detention further indicate that said cases have been filed on allegations that the petitioner having entered into criminal conspiracy with his accomplice to commit a criminal breach of trust with one Punjab National Bank, Dhebar Road Branch was involved in creating false documents and despite knowing that the document is not genuine have certified the title of the property on which said bank has advanced huge amount. That on account of false search report and false document the said bank had suffered a loss to the tune of Rs.55,20,000/-. Furthermore, the grounds indicate that the petitioner being an Advocate is conversant with the relevant provisions of law and valuable securities were entrusted for verification to issue title clearance certificate. That the petitioner having taken undue advantage of said trust have misused his position and committed breach of trust which has resulted into loss of confidence in the general public and has affected the economic situation of Rajkot City. Not only that but it has also generated a sense of insecurity amongst the members of the public and they are hesitating to deposit their monies in the bank. That as such, the activities of the petitioner has adversely affected the maintenance of public order in the City of Rajkot.

4. That the respondent no.1 also considered the material collected by the Investigating Officer of "A" Division Police Station during the investigation of the criminal cases filed against the petitioner alongwith order of rejection of bail application filed vide Criminal Misc. Application no.1050/98 in the Court of Sessions Judge at Rajkot which was rejected by order dated 3-10-1999 on the ground that the activity of the

petitioner in granting false title clearance certificate and search report cannot be said to be an isolated incident of negligence, but as there are ten incidents, the petitioner is likely to have been involved in a criminal conspiracy whereby the petitioner has facilitated his accomplice including the Bank Manager and other staff members to commit various offences including cheating and criminal breach of trust. The petitioner is supplied with the copy of the said rejection order of bail alongwith the grounds of detention.

5. The respondent no.1- detaining authority after taking into consideration the aforesaid material came to the conclusion that the petitioner having been involved in a criminal offence made punishable under Chapter XVII of the Indian Penal Code is a " dangerous person" within the meaning of Section 2(c) of "PASA" and that as subsequently the petitioner has been released on bail in all the criminal cases, the resort to general provisions of law is not sufficient to prevent the petitioner from continuing his antisocial activity, it was necessary to exercise powers under Section 3(1) of "PASA", and hence, the impugned order is passed.

6. It may be noted that vide order dated 27-7-1999, this Court issued rule which is served to the respondents. However, no affidavit-in-reply on behalf of either of the respondents has been filed.

7. Learned Advocate Mr. Y.S. Lakhani assailed the impugned order on numerous grounds. It has been contended that the detaining authority has construed the material placed before him by the sponsoring authority ,and particularly, the order of rejection of bail dated 13-10-199 passed by the Sessions Court, Rajkot, however, the detaining authority has conveniently failed to consider the subsequent order dated 25-1-1999 passed by the Sessions Court, Rajkot granting regular bail to the petitioner in all the ten cases filed against him. Elaborating the submissions, Mr. Lakhani referred to the observations made by the learned Sessions Judge in the bail order, copy of which is produced at page 48 that the bail papers produced before the Court does not disclose the prima facie case against the petitioner with regard to involvement in the criminal conspiracy to make false documents and to use the same. It is further submitted that such bail orders were favourable to the detenu. The sponsoring authority failed to produce the same before the detaining authority and as such the material which is favourable to the detenu has not been considered by the detaining authority, and thereby, non consideration of

vital facts have prejudicially affected the subjective satisfaction reached by the detaining authority against the petitioner. That the impugned order cannot be said to have been passed with due and proper application of mind, and thereby, deserves to be quashed and set aside. To support the submission, Shri Lakhani has referred to and relied on the observations made by the Supreme Court in the matter of ABDUL SATHAR IBRAHIM MANIK VS. UNION OF INDIA & ORS. (AIR 1991 SC 2261) wherein it is observed that in a case where detenu is released on bail and is at liberty at the time of passing the order of detention, then the detaining authority has to necessarily rely upon them as that would be a vital ground for ordering detention. In such a case, the bail application and the order granting bail should necessarily be placed before the authority and the copy should also be supplied to the detenu.

8. The impugned order is also assailed by Mr. Lakhani on the ground that the grounds of detention does not disclose any fact whereby a live link of alleged criminal activity from 23-9-1998 the date of filing of the complaint till 25-5-1999 the day on which the impugned order is passed could be said to have been continued. Thus, on account of lapse of more than seven months between the alleged criminal activity and taking of action by the authority, the impugned order is vitiated as there is no nexus between the same. To support the said submission, Mr. Lakhani has referred to and relied on the observations made by the Supreme Court in the matter of PRADIP NILKANTH PATURKAR VS. S RAMAMURTHI & ORS. (AIR 1994 SC 656).

9. On appreciation of facts and circumstances apparent from the material produced on record, in my opinion, the impugned order suffers from the vice of inordinate delay of seven months in taking action and as the live link of alleged criminal activity having been snapped before passing of the order, the impugned order is bad in law, the subjective satisfaction being vitiated on account of undue delay. The impugned order is also bad in law on account of non application of mind as the detaining authority has failed to take into consideration the vital material favourable to the detenu which could have tilted the balance in favour of the petitioner and prevented the detaining authority from passing the order.

10. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 25-5-1999 passed by the respondent no.1-Police Commissioner, Rajkot against the petitioner is hereby quashed and set aside.

The petitioner-detenu-Hitenbhai Vanmalidas Ganatra is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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